

REMARKS

This Paper is submitted in response to the final Office Action mailed May 31, 2006 having a shortened statutory response period ending on August 31, 2006. This Paper is filed within two months of the Office Action mail date, namely July 31, 2006. The Commissioner is hereby authorized to charge any additional fees to Deposit Account number 02-1818.

Attorney for Applicants would like to thank Examiner Thao T. Tran for the courtesies extended during a telephone conversation on July 25, 2006.

Claims 3-7, 9, 11-18, 20, 22-23, 25, 28, 39-45, and 61-62 are pending in this application. Claims 10 and 26 have been canceled. Claims 18 and 39 have been amended to more clearly articulate the claimed subject matter. Applicants respectfully request that this Paper be entered as it 1) places the claims in a condition for allowance, and 2) requires only a cursory review by the Examiner.

Claims 3-7, 9-18, 20, 22-23, 25-26, 28, 39-45, and 61-62 were rejected under 35 U.S.C. §112 1st paragraph as the term “a single tie layer” was alleged to be not supported by the specification. Applicants respectfully disagree with and traverse this rejection. It is an axiom of patent law that a patent application need not describe the claimed subject matter in exactly the same terms as used in the claims. *In re Wertheim*, 191 USPQ 90, 96 (CCPA 1976). Consequently, the test for determining compliance with the description requirement is whether the application reasonably conveys to the skilled artisan that the inventor had possession of the claimed subject matter at the time of the filing date. *Eiselstein v. Frank*, 34 USPQ2d 1467, 1470 (Fed. Cir. 1995). The skilled artisan would readily recognize that the present specification, and Figure 1 in particular, discloses a single tie layer disposed between and in direct contact with the first and second exterior layers. See present specification at page 3 lines 15-18, and Figure 1 (Note: Figure 1 was amended in Applicants’ *Amendment and Reply to March 12, 2003 Office Action* submitted August 12, 2003). In view of the foregoing, Applicants respectfully request that the alleged §112 rejection be withdrawn.

Claims 4-7, 9-18, 20, 22-23, 25-26, 28, 39-45, and 61 were rejected under 35 U.S.C. §102(e) as being anticipated by U.S. Patent No. 6,361,843 to *Smith* et al. (*Smith*). Claims 4-7, 9-10, 14-18, 20, 22-23, 25-26, 28, 39-41, and 61 were rejected under 35 U.S.C. §102(e) as being anticipated by U.S. Patent No. 6,610,392 to *Ramesh* et al. (*Ramesh*). Claims 11-13 and 42-45 were rejected under 35 U.S.C. §103(a) as being obvious over *Ramesh* in view of U.S. Patent No.

4,487,885 to Adur et al. (*Adur*). Claims 3 and 62 were rejected under 35 U.S.C. §103(a) as being obvious over *Smith* in view of U.S. Patent No. 5,695,840 to Mueller (*Mueller*). Claims 3 and 62 were rejected under 35 U.S.C. §103(a) as being obvious over *Ramesh* in view of *Mueller*. Applicants respectfully traverse and disagree with these rejections.

It is a well settled axiom of patent law that every word in a claim must be considered in judging patentability of the claim. *In re Ochiai*, 71 F.3d 1565, 1572, 37 USPQ2d 1127, 1133 (Fed. Cir. 1995); *In re Wilson*, 424 F.2d 1382, 1385, 165 USPQ 494, 496 (CCPA 1970). Moreover, claim terms are to be given their ordinary and accustomed meaning. *Hockerson-Halberstadt, Inc., v. Avia Group Int'l Inc.*, 222 F.3d 951, 955, 55 USPQ2d 1487, 1490 (Fed. Cir. 2000). Thus, when every word of independent claims 18 and 39 is properly given its ordinary meaning, it is clear no combination of *Smith*, *Ramesh*, *Adur* and/or *Mueller* discloses or suggests a multiple layer structure having a first exterior layer composed solely of a PCCE or a polyamide, a second exterior composed solely of an ethylene α-olefin copolymer, and a single tie layer disposed between and directly contacting only the first and second exterior layers as recited in the present claims.

The Examiner contends that a plurality of intermediate layers or sublayers (in particular, a tie/core/tie layer intermediate structure) may be considered a single tie layer. See Office Action dated May 31, 2006 at ¶¶12, 16. This reading of the claims, however, contradicts the aforementioned well-established canons of claim interpretation. The present claims explicitly recite “a single tie layer,” not “a plurality of tie layers,” or “a tie layer having sublayers,” or even “tie layers.” Indeed, in accordance with proper claim interpretation, one of ordinary skill in the art would readily appreciate that the term “single” carries its ordinary meaning of “not accompanied by others,” or “consisting of one part.” The assertion that a plurality of intermediate layers are the same as “a single tie layer” fails to consider 1) the term “single” in the claims and 2) the ordinary meaning of the term “single.” Moreover, only a single tie layer—not a plurality of intermediate layers—is capable of being disposed between first and second exterior layers and directly contacting only the first exterior layer and only the second exterior layer.

Thus, when the claims are properly interpreted, it is clear that *Smith* teaches away from a multiple layer structure having a single tie layer disposed between first and second exterior layers, the tie layer in direct contact with only the first and second exterior layers as recited in the present claims. *Smith* discloses a polymeric structure having five layers: an exterior solution

contact layer (II), a core layer (I), an exterior outer layer (III), and two tie layers, namely, a tie layer between layers II and I, and a tie layer between layers I and III. *Smith*, col. 2 line 65 through col. 3 line, FIG. 1. *Smith's* core layer I lies between the exterior solution contact layer (II) and the exterior outer layer (III) thereby preventing a single tie layer from contacting both exterior layers. *Smith* further requires two tie layers—a tie layer between layers II and I, and a tie layer between layers I and III further teaching away from a single tie layer. As *Smith* discloses 1) a multilayered structure with a core layer that prevents direct contact between a single tie layer and only the two exterior layers, and 2) *Smith* explicitly discloses a multiple layer structure with two tie layers, *Smith* teaches away from a multiple layer structure having a single tie layer disposed between the first and second exterior layers, the single tie layer in direct contact with only the first and second exterior layers as recited in the present claims as recited in the present claims.

Ramesh likewise teaches away from a multiple layer structure having a single tie layer disposed between first and second exterior layers, the tie layer in direct contact with only the first and second exterior layers as recited in the present claims. *Ramesh* discloses a multilayer film having at least four layers: exterior layer A, inner layer B, inner layer C, and exterior layer D. *Ramesh*, col. 2 lines 38-49, col. 15 lines 28-29, *see also* col. 21 lines 17-25. As the *Ramesh* multiple layer film requires two inner layers between exterior layers A and D, *Ramesh* teaches away from a single tie layer disposed between the exterior layers and in direct contact with each exterior layer as recited in the present claims.

Adur and *Mueller* each fail to fulfill the deficiencies of *Smith* and/or *Ramesh*. *Adur* merely discloses adhesive blends and fails to teach or suggest a film having an exterior layer composed of an ethylene and α -olefin copolymer having a density of less than about 0.905 g/cc as recited in the claims. Indeed, *Mueller* further teaches away from the present claims as *Mueller* discloses a five-layered film with an inner core layer disposed between the exterior layers, the inner core layer preventing direct contact between two exterior layers and a single tie layer disposed therebetween as recited in the present claims. *Mueller*, col. 6 lines 4-9, FIG. 1.

In view of the foregoing amendments and remarks, Applicants respectfully submit that claims 3-7, 9, 11-18, 20, 22-23, 25, 28, 39-45, and 61-62 are in a condition for allowance and respectfully request an early notice of the same.

Respectfully submitted,

BELL, BOYD & LLOYD LLC

BY 

Ted J. Barthel

Reg. No. 48,769

Customer No. 29200

Dated: July 31, 2006